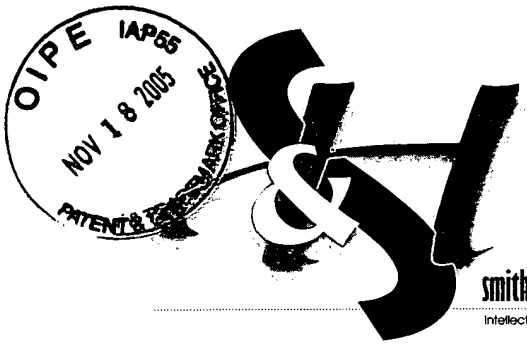
1FW-AF/2157



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November 15, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant: Jan Philippe Eiras et al.
Serial No.: 10/065,793
Filing Date: 11/19/2002
For: Message Traffic Interception System
Our Reference: 1070.03

Examiner: Hussein A. El Chanti
Art Unit: 2157
Confirmation No.: 4753

Dear Sir:

Enclosed please find the following:

1. First Amended Brief of Appellant having a Certificate of Mailing dated July 25, 2005 – (11 pages);
2. A copy of U.S. Patent No. 6,763,040;
3. A copy of Notification of Non-Complaint Appeal Brief – (2 pages); and
4. Self-addressed, postage prepaid post card to serve as a receipt for items 1-3.

Very respectfully,

SMITH & HOPEN

Molly Sauter

By: Molly L. Sauter
molly.sauter@smithhopen.com

MLS/sb
enclosures

CERTIFICATE OF MAILING
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this First Amended Brief of Appellant, is being mailed with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 15, 2005.

Date: **November 15, 2005**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Jan Phillippe Eiras et al.

S.N.: 10/065,793 Examiner: Hussein A. El Chanti

Filed: 11/19/2002 Art Unit: 2157

For: Message Traffic Interception System Confirmation No.: 4753

Our Reference: 1416.01

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

FIRST AMENDED BRIEF OF APPELLANT

1. Real Party In Interest.

Applicant is the real party in interest.

2. Related appeals and interferences.

There are no related appeals or interferences directly affecting or that will be directly affected or that would have a bearing on the Board's decision in this appeal.

3. Status of claims.

Claims 1-31 were initially filed. Claim 1 was amended a first time in Amendment A filed May 13, 2004. Claims 1-31 were finally rejected by an Office Action mailed February 22, 2005. Claim 1, once amended, and dependent claims 2-31, are pending and said claims 1-31 are appealed.

4. Status of amendments.

Amendment AF (the second amendment) was filed in the parent case on April 19, 2005 and was not entered, as indicated by the Advisory Action mailed May 11, 2005. No further amendments have been filed.

5. Summary of claimed subject matter.

Citations to the specification are by paragraph number.

The claimed subject matter is a computer program product for program level message traffic interception comprising a computer-readable medium, a protocol independent API core module stored on the medium (Paragraph [0045], Fig. 1), the API core module having an array of predetermined rules for intercepted message traffic (Paragraph [0047], Fig. 4), and an interface communication emulator module communicatively coupling protocol-specific program level message traffic to the API core (Paragraph [0041], Fig. 2).

6. Grounds of rejection to be reviewed upon appeal.

Whether the Office erred by issuing a premature Final Office action and whether the Office erred in rejecting claims 1-31 under 35 U.S.C § 102(e) as being anticipated by Hite et al., (U.S. Patent No. 6,763,040).

The claims on appeal stand or fall together; claim 1 is the only independent claim.

8. Arguments.

Premature Finality of Office Action

The Office issued a Final Office action, rejecting claims 1-31, on February 22, 2005, in response to Amendment A filed by the Applicant on May 13, 2004.

Amendment A presented to the Office on May 13, 2004, included the following amendment to Claim 1:

> Claim 1 (Currently Amended) A computer program product for program level message traffic interception comprising:
>
> a computer-readable medium;

a protocol independent API core module stored on the medium, the API core module having an array of predetermined rules for intercepted message traffic; and

an interface communication emulator module communicatively coupling protocol-specific program level message traffic to the API core.

As such, the amendment to claim 1 filed on May 13, 2004, presented the addition of the term "program level" to the preamble and to the claim elements. The amendment was successful in overcoming the rejections presented in the First Office Action.

In the Final Office Action, the Office stated that the Applicant's amendment as described above necessitated the new ground of rejection, and therefore the Action was made Final. However, it is apparent from the comments by the Office presented in this Final Office Action that the amendment was not considered and therefore could not have necessitated the new ground of rejection.

More specifically, the Office's analysis of independent Claim 1 stated that Hite teaches, "an interface communication emulator module communicatively coupling protocol specific message traffic to the API core (see col. 1, lines 56-58, the received messages are provided with program specific protocol)". From the reading of the analysis by the Office, it is clear that the Office did not address the amendment adding the term "program level" to this element of Claim 1. The Office completely ignored the amendment adding the term "program level" from the analysis of the claim. The Office did not address the amended language in the analysis of the elements of the claim, or in the preamble of the claim in view of the Hite reference.

For a determination to be made that the Applicant's amendment necessitated the new ground of rejection, the amendment must be such that the Office requires a new search of the prior art to be performed. In this specific case, if the Office felt that the addition of the term "program level" to the claim language made it necessary to perform a new search, it would seem reasonable that the term "program level" would be specifically addressed with regard to the new reference to establish the grounds for a Final Rejection. The Office has not identified anywhere in the Hite reference where the claim language, including the amendment, is described and as

such, the Office did not properly establish grounds to make a Final Rejection on February 22, 2005.

For the reasons described above, Applicant believes that the Final Office Action mailed February 22, 2005, was premature. Accordingly, reversal of the final rejection is solicited

Anticipation by Hite et al., (U.S. Patent No. 6,763,040) under 35 U.S.C. § 102(e)

In the Final Office Action, mailed on February 22, 2005, the Office additionally rejected claims 1-31 under 35 U.S.C. § 102(e) as being anticipated by Hite et al., (U.S. Patent No. 6,763,040).

In the Final Office Action, regarding claim 1, the Office states that Hite teaches a computer program product for message traffic interception comprising, a computer readable medium, as shown by Hite at col. 6 lines 4-47, a protocol independent API core module store on the medium, the API core module having an array of predetermined rules for intercepted message traffic, as shown by Hite at col. 6, lines 48-67 and TABLE A, and an interface communication emulator module communicatively coupling protocol-specific message traffic to the API core, as shown by Hite at Col. 1, lines 55-58). The Applicant respectfully traverses the finding of the Office.

Claim 1 of the present invention includes a protocol independent API core module stored on a computer-readable medium. The API described by Hite is not protocol independent. As described by Hite at col. 1 and col. 11, a communication protocol is provided comprising a packet protocol having a protocol field for indicating the type of protocol, a length of data field for listing the length in bytes of the data field, a data field containing sub protocol data, and a checksum for determining the integrity of the packet. As such, the API described by Hite et al. is not protocol independent, but instead is dependent upon the specific protocol dictated by the internet appliance or the control area network selected. Additionally, the Office cites TABLE A of Hite as describing an array of predetermined rules for intercepted message traffic as claimed by the present invention. However, TABLE A is a list of exemplary messages that are valid between a device manager and a device master. These exemplary valid messages are not equivalent to the array of predetermined rules for intercepted message traffic as disclosed and claimed by the present invention. As such, Hite does not describe the API core module having

an array of predetermined rules for intercepted message traffic as disclosed and claimed by the present invention.

Additionally, Claim 1 of the present invention includes an interface communication emulator module communicatively coupling the protocol-specific program level message traffic to the API core. As disclosed at paragraph [0041] and shown in Fig. 2, the interface communication emulator module is a component that handles the actual receipt and transmission of messages on a specific type of interface. Utilizing the interface communication emulator module, messages are received and reformatted into the standard scenario compliant structures. The Office cites col. 1, lines 55-58 of Hite as teaching an interface communication emulator module communicatively coupling the protocol-specific program level message traffic to the API core. However, Hite et al. describes at col. 1, lines 55-58 a dynamic protocol message generator to enable a scripting language capable of directly communicating on any TCP/IP network connection. Hite goes on to describe this dynamic protocol message generator at col. 51 wherein the primary goal of the dynamic protocol message generator is to make a scripting language such as VBScript or JavaScript capable of directly communicating on any TCP/IP network. As such, Hite does not describe an interface communication emulator module that handles the actual receipt and transmission of messages on a specific type of interface as disclosed and claimed by the present invention.

For the reasons cited above, Applicant believes that independent claim 1 is not anticipated by Hite et al. and that Applicant's patent rights have clearly been unfairly denied.

The Office's unfair refusal to consider this significant distinction between the claimed invention and the clear teachings and suggestions of the prior art has lead to an unfair denial of Applicant's patent rights.

Accordingly, reversal of the final rejection is solicited. No fair interpretation of the prior art can support the Office's position.

Very respectfully,

SMITH & HOPEN

By:_____

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CERTIFICATE OF MAILING
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this Fist Amended Brief of Appellant is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 25, 2005.

Dated: November 15, 2005

Shelley Butz

9. Claims Appendix.

Claim 1 (Once Amended) A computer program product for program level message traffic interception comprising:

a computer-readable medium;

a protocol independent API core module stored on the medium, the API core module having an array of predetermined rules for intercepted message traffic; and

an interface communication emulator module communicatively coupling protocol-specific program level message traffic to the API core.

~~2)~~Claim 2 (Original) The computer program product of claim 1 further comprising a message database communicatively coupled to the API core module, the message database further comprising an array of message properties for each message.

~~3)~~Claim 3 (Original) The computer program product of claim 2 wherein the array of message properties further comprise message interpretation data.

~~4)~~Claim 4 (Original) The computer program product of claim 2 wherein the array of message properties further comprise message formatting data.

~~5)~~Claim 5 (Original) The computer program product of claim 2 wherein the array of message properties further comprise message routing data.

~~6)~~Claim 6 (Original) The computer program product of claim 2 wherein the array of message properties further comprise message default values.

~~7)~~Claim 7 (Original) The computer program product of claim 2 wherein the array of message properties further comprise message transmission rules.

~~8)~~Claim 8 (Original) The computer program product of claim 2 wherein the array of message properties further comprise enable-lockout combination data.

~~9)~~Claim 9 (Original) The computer program product of claim 2 wherein the array of message properties further comprise limits on message field values.

~~10)~~Claim 10 (Original) The computer program product of claim 2 wherein the array of message properties further comprise message field units.

~~11)~~Claim 11 (Original) The computer program product of claim 2 wherein the array of message properties further comprise user-defined identifiers.

~~12)~~Claim 12 (Original) The computer program product of claim 2 wherein the array of message properties further comprise interface information.

~~13)~~Claim 13 (Original) The computer program product of claim 2 further comprising a scenario module communicatively coupled to the message database, the scenario module further comprising state machine emulation definition, the definition providing event-driven parameters responsive to message traffic.

~~14)~~Claim 14 (Original) The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message identification.

~~15)~~Claim 15 (Original) The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message contents.

~~16)~~Claim 16 (Original) The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message occurrence.

~~17)~~Claim 17 (Original) The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message frequency.

~~18)~~Claim 18 (Original) The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on a count of the number of times an event's parameters have been satisfied.

~~19)~~Claim 19 (Original) The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on a comparison with variables.

~~20)~~Claim 20 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters modify the contents of a message.

~~21)~~Claim 21 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters route a message.

~~22)~~Claim 22 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters delete a message.

~~23)~~Claim 23 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters controls other events.

~~24)~~Claim 24 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters performs calculations.

~~25)~~Claim 25 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters controls user displays.

~~26)~~Claim 26 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters extracts at least one value from a message.

~~27)~~Claim 27 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters creates and sends an arbitrary message defined in the database.

~~28)~~Claim 28 (Original) The computer program product of claim 13 wherein an event defined by the event-driven parameters transforms an incoming message into a different message defined in the database.

~~29)~~Claim 29 (Original) The computer program of claim 13 wherein the actions triggered by an event provide logical branching, looping, iteration, and internal or external subroutine calling capability.

~~30)~~Claim 30 (Original) The computer program product of claim 13 wherein the communications interface emulator module is communicatively coupled to the scenario

execution module which is communicatively coupled to the message database whereby messages are received, reformatted into a message database compliant structure and outbound messages generated by the scenario module are passed back to the communications interface emulator module for protocol-specific transmissions

~~31)~~Claim 31 (Original) The computer program product of claim 13 further comprising a post-test data analysis capability wherein recorded data may be analyzed, abstracted, and displayed in a variety of text and graphical formats.

10. Evidence Appendix

U.S. Patent Application No. 6,763,049 to Hite et al. was entered by the examiner in a Final Office Action mailed on February 22, 2005 and is relied upon by the appellant in this Appeal Brief.

Commissioner for Patents
P.O. Box 1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,793	11/19/2002	Jan Phillippe Eiras	1416.01	4753

21901 7590 10/19/2005

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EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/065,793	Applicant(s) EIRAS ET AL.	
	Examiner Hussein A. El-chanti	Art Unit 2157	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on *27 July 2005* is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file anamended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☒ Other (including any explanation in support of the above items):

The brief is missing sections (ix) Evidence appendix, and (x) Related proceeding appendix according to 41.37 (c).

ARIC ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100